tendency to mitigate somewhat the rigor of the rule against contribution. It would seem that this has been due to a great extent to the development of the law of torts and the very considerable enlargement of its scope. The word "tort," at first of rather restricted application, has come of late to include many wrongs involving but a slight tincture of moral delinquency that were previously remediless.[17]

JOINT AND SEVERAL LIABILITY OF JOINT TORT-FEASORS FOR NEGLIGENT INJURIES.—While it is true, as stated by an eminent writer on the subject of torts,[1] that no comprehensive general rule can be formulated which will harmonize all the authorities as to what constitutes a joint liability among tort-feasors for negligent injuries, a review and classification of the cases on the subject reveals the fact that the seeming conflict of opinion is far more apparent than real. This question can be considered most conveniently under four separate heads.

1. Persons who act separately and independently, each causing a separate and distinct injury, cannot be sued jointly, even though the injuries may have been precisely similar in character and inflicted at the same time.[2] A joint tort is essential to the maintenance of a joint action.[3] For entirely separate and distinct wrongs in no wise connected, actually or impliedly, it is undenied that wrongdoers are liable only in separate actions.[4]

2. When two or more persons owe to another a common duty, which each wongfully neglects to perform, then, although the negligence of each was without concert, if such several neglects concurred in causing the injury, there is a joint tort with a joint and several liability.[5] Likewise where the negligent acts of several persons engaged in a common undertaking results in injury to some third party, they are jointly and severally liable, and this although the specific injury was done by one of the parties alone.[6] Here the liability is founded upon the concert of action. *A fortiori*, where there is unity

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[17] Palmer *v.* Wick & Pulteneytown Steam Shipping Co., [1894] A. C. 318.

[1] COOLEY, TORTS, 92-95.

[2] Powell *v.* Thompson, 80 Ala. 51; Miller *v.* Highland Ditch Co., 87 Cal. 430, 25 Pac. 550.

[3] Williams *v.* Sheldon, 10 Wend. (N. Y.) 654; Millard *v.* Miller, 39 Colo. 103, 88 Pac. 845.

[4] Boyd *v.* Philadelphia Ins. Patrol, 113 Pa. St. 269, 6 Atl. 536; Livesay *v.* Denver First National Bank, 36 Colo. 526, 86 Pac. 102, 6 L. R. A. (N. S.) 598; Howard *v.* Union Traction Co., 195 Pa. St. 391, 45 Atl. 1076.

[5] Economy Light, etc., Co. *v.* Hiller, 203 Ill. 518, 68 N. E. 72.

[6] Central of Georgia Ry. Co. *v.* Brown, 113 Ga. 414, 38 S. E. 989, 84 Am. St. Rep. 250; Hawkesworth *v.* Thompson, 98 Mass. 77, 93 Am. Dec. 137.

of design and concert of action, the parties negligently causing the injury are subject to a joint and several liability therefor.[7]

3. Where several persons, acting without concert of action, independently, and without any common duty, by their several acts contribute to produce a single injury, each being sufficient to have produced the whole, and it is impossible to distinguish the portions of the injury caused by each, they are joint tort-feasors.[8] Thus, where two contiguous buildings fell upon and crushed a third intervening building by reason of the co-existent and concurrent negligence of the respective owners thereof in failing to keep their separate walls in repair, the owners were liable jointly and severally for the injury.[9]

4. Although there is considerable conflict of opinion on this point, the following statement may yet be taken as the rule supported by the decided weight of authority. Where the negligence of two or more persons produces a single, indivisible injury, although such persons acted independently of one another, without a common duty, common design or concert of action, they are jointly and severally liable, and this although without fault on the part of one a part or the whole of the same damage would have resulted from the neglect of the other.[10] This view is maintained in the recent case of *Johnson* v. *Thomas Irvine Lumber Co.* (Wash.), 135 Pac. 217. It has been stated that "to make tort-feasors jointly liable, there must be some sort of community in the wrongdoing and the injury must be due in some way to their joint work, but it is not necessary that they be acting together or in concert if their concurring negligence occasions the injury."[11] Each wrongdoer is liable because of the neglect of his own duty, and all are jointly liable because the acts of all contributed to the injury.[12]

Apparently in conflict with the view above set forth, there are numerous cases holding that such tort-feasors are liable only for the

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[7] Klauder *v.* McGrath, 35 Pa. St. 128, 78 Am. Dec. 329; Consolidated Ice-Machine Co. *v.* Keifer, 134 Ill. 481, 25 N. E. 799, 23 Am. St. Rep. 688.

[8] Allison *v.* Hobbs, 96 Me. 26, 51 Atl. 245; Corey *v.* Havener, 182 Mass. 250, 65 N. E. 69; McClellan *v.* St. Paul, etc., R. Co., 58 Minn. 104, 59 N. W. 978.

[9] Oulighan *v.* Butler, 189 Mass. 287, 75 N. E. 726; Johnson *v.* Chapman, 43 W. Va. 639, 28 S. E. 744.

[10] Grand Trunk Co. *v.* Cummings, 106 U. S. 700; Matthews *v.* Delaware, etc., R. Co., 56 N. J. L. 34, 27 Atl. 919, 22 L. R. A. 261; Colegrove *v.* N. Y. & N. H. R. Co., 20 N. Y. 492; Slater *v.* Mersereau, 64 N. Y. 138; Cuddy *v.* Horn, 46 Mich. 596, 10 N. W. 32, 41 Am. Rep. 178; Strauhal *v.* Asiatic S. S. Co., 48 Oreg. 100, 85 Pac. 230; Day *v.* Louisville Coal & Coke Co., 60 W. Va. 27, 53 S. E. 776; Elkhart Paper Co. *v.* Fulkerson, 36 Ind. App. 219, 75 N. E. 283; Osage City *v.* Larkin, 40 Kan. 206, 2 L. R. A. 56; McKay *v.* Southern Bell, etc., Co., 111 Ala. 337, 19 So. 695, 31 L. R. A. 589. This doctrine is followed in Virginia. Walton *v.* Miller, 109 Va. 210, 63 S. E. 458.

[11] Strauhal *v.* Asiatic S. S. Co., *supra.*

[12] Brown *v.* Coxe Bros. (C. C. A.), 75 Fed. 689.

injuries caused by their separate acts.[13] Most of them, however, are really cases of nuisances, in which class of torts a different rule[14] is universally admitted as prevailing.

Though the dissent from the doctrine here maintained is not as great as it would at first appear, there are quite a number of very able courts which take the view that tort-feasors, not acting in concert, or by unity of design, are not liable jointly and severally for damages, although the consequences of the several torts have united to produce an injury to the plaintiff.[15] But this view is decidedly in the minority, and the one first advanced seems much the better on both reason and authority.[16]

NEGLIGENCE OF PARENT IMPUTED TO INFANTS.—The doctrine imputing to an infant the negligence of the parents originated in England.[1] The principle was first recognized in this country in a New York case where an infant of tender years was denied recovery for injuries by reason of the negligence of its parents in allowing it to be in danger.[2] It cannot have any application to infants old enough to be guilty of contributory negligence.[3] Other cases arise where the parent is present and actively negligent. No distinction exists which warrants the application of different rules to the two classes of cases. Of the first class was the case first establishing the rule in this country. It is submitted that the reasoning in the case was unsound, and it has since been much criticized.[4] It denies to the infant the protection of the law. The parent is in truth the guardian of the infant when the latter is not *sui juris,* but it cannot be justly said that the acts of the parent are the acts of the infant, and thus allow, in effect, a waiver by the parent of a tort upon the infant. In Vermont the doctrine was first directly repudiated. There a rule was adopted which has received sanction in a majority of the

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[13] Chipman *v.* Palmer, 77 N. Y. 51, 33 Am. Rep. 566; Watson *v.* Colusa-Parrot, etc., Co., 31 Mont. 513, 79 Pac. 14; Ames *v.* Dorset Marble Co., 64 Vt. 10, 23 Atl. 857; Sloggy *v.* Dilworth, 38 Minn. 179, 36 N. W. 451, 8 Am. St. Rep. 656; Loughran *v.* Des Moines, 72 Iowa 382, 34 N. W. 172.

[14] Hyde Park, etc., Co. *v.* Porter, 167 Ill. 276, 47 N. E. 206; Sloggy *v.* Dilworth, *supra;* Pulaski, etc., Coal Co. *v.* Gibbon, 110 Va. 444, 66 S. E. 73.

[15] Lull *v.* Fox & W. Improv. Co., 19 Wis. 100; Little Schuylkill Nav., etc., Co. *v.* Richards, 57 Pa. St. 142, 98 Am. Dec. 209; Dutton *v.* Lansdowne, 198 Pa. St. 563, 48 Atl. 494, 53 L. R. A. 469; Wiest *v.* Electric Traction Co., 200 Pa. St. 148, 49 Atl. 891, 58 L. R. A. 666; Cole *v.* Lippet, 22 R. I. 31, 46 Atl. 43; Butler *v.* Ashworth, 110 Cal. 614, 43 Pac. 4, 386.

[16] Johnson *v.* Thomas Irvine Lumber Co., *supra.*

[1] Waite *v.* Northeastern Ry. Co., El. Bl. & El. 719, 728.

[2] Hartfield *v.* Roper, 21 Wend. (N. Y.) 615.

[3] McMahon *v.* New York, 33 N. Y. 642.

[4] Kay *v.* Penn. Ry. Co., 65 Pa. St. 264, 3 Am. Rep. 628.